

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BRIAN KAMEDULA,	)	Case No. 3:10-cv-00160-ECR-RAM
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
ROBERT BANNISTER, et al.,	)	
Defendants.	)	

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Our previous order (#38) filed on July 12, 2008, is hereby vacated.

On June 14, 2011, the Magistrate Judge filed a Report and Recommendation (#35) recommending that Defendants' Partial Motion to Dismiss (#31) be granted.


Plaintiff has filed Objections (#36) to the Report and Recommendation (#35). Defendants filed their Response to Plaintiff's Objections (#37) on July 5, 2011. We agree with the finding of the Magistrate Judge that Plaintiff's Fifth Amendment claim should be dismissed for failure to state a claim because no federal actors are alleged to have been involved. The State of Nevada and the Nevada Department of Corrections must be dismissed from this case because they are not "persons" for the purposes of 42 U.S.C. § 1983. Plaintiff's state law claims for medical and dental malpractice should be dismissed for failure to

1 comply with Nevada Revised Statutes § 41A.071. Plaintiff's claim of deliberate  
2 indifference is barred by the appropriate statute of limitations to the extent  
3 Defendants were deliberately indifferent to Plaintiff's serious medical need in  
4 violation of the Eighth Amendment as a result of the alleged failure to provide  
5 him with a retainer or partial dentures until 2005. To the extent Plaintiff asserts a  
6 claim for deliberate indifference related to pain, discomfort and injury he  
7 continued to experience from January 21, 2008 until January 21, 2010, however,  
8 the claim should be allowed to proceed. We interpret Plaintiff's pro se pleadings  
9 to allege such a claim for pain, discomfort and injury between January 21, 2008  
10 and January 21, 2010. Finally, Plaintiff's Eighth and Fourteenth Amendment  
11 claims should be dismissed for failure to exhaust administrative remedies.

12 The Report and Recommendation of the Magistrate Judge is well taken  
13 and is APPROVED and ADOPTED. Therefore, IT IS ORDERED that  
14 Defendants' Partial Motion to Dismiss (#31) is GRANTED as to all claims  
15 excepting Plaintiff's claim for deliberate indifference related to pain, discomfort  
16 and injury he continued to experience from January 21, 2008 until January 21,  
17 2010.

18 IT IS FURTHER ORDERED that Defendants shall have twenty-one (21)  
19 days from the date hereof to file an amended answer if they wish to do so.

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21 Dated this 27<sup>th</sup> day of July 2011.

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24 EDWARD C. REED, JR.  
United States District Judge  
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